

**Remarks**

Claims 1, 3, and 6-12, and 14-18 are under Examination in this application, claims 19-28 having been cancelled in response to the Restriction Requirement as indicated in the Office action (Applicants of course reserve the right to prosecute the cancelled claims in a divisional application) and claims 2, 4-5, and 13 cancelled herein again with a right to pursue in continuing applications. The specific issues raised in the Office action are addressed below.

**I. Alleged Indefiniteness Under 35 U.S.C. § 112**

The office action alleges that claims 5, 7, 8, and 12-14 are indefinite as it is alleged that trademarks are present within the claims. The Office action does not indicate which terms are alleged to be trademarks, thus the rejections are *prima facie* insufficient and should be withdrawn. However, Applicants have nevertheless attempted to address the issues upon which the refusals potentially might have been based.

**Claim 5**

Claim 5 has been cancelled.

**Claim 7**

The Office action's allegation of trademark use might refer to the name "Pantone" in claim 7. However, Applicants note that following "Pantone" in each case is the number for a color. This number is not a trademark, but rather an identification of a particular color offered by Pantone. These colors do not change.

Moreover, Applicants note that the use of a trademark does not *per se* render a claim indefinite and, in this case, the use of "Pantone" does not render the claim indefinite. In this regard, the Pantone color matching system is the worldwide standard for color matching. Governments even codify Pantone colors. For example, the state of Texas has codified Pantone colors for its flag and the U.S. Government has codified Pantone colors for, among other things, hazardous material labels. 49 C.F.R. § 172.407(d)(5); Texas Government Code Chapter 3100.001(b)(2) (<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.3100.htm>).

In support of the fact that use of a Pantone color is sufficiently definite, Applicants also note that the United States Patent and Trademark Office has allowed the use of "Pantone" in claims in many issued patents, as can be seen in screen capture below of a search for patents with claims including "Pantone."

Patent Database Search Results: aclm/pantone in US Patent Collection - Windows Internet Explorer provided by Klarquist Sparkman

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ACLM/pantone: 40 patents.  
Hits 1 through 40 out of 40

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PAT. NO.	Title
1 <a href="#">7,605,945 T</a>	<a href="#">Color reproduction definition creating method and color conversion method</a>
2 <a href="#">7,576,890 T</a>	<a href="#">Digital swatch book</a>
3 <a href="#">7,561,305 T</a>	<a href="#">Image processing apparatus, image processing method and program product therefor</a>
4 <a href="#">7,531,392 T</a>	<a href="#">Method for producing disc overlay proofs</a>
5 <a href="#">7,477,419 T</a>	<a href="#">Prepress procedure of exclusive four-color reproduction with enhanced gamut for rotogravure and special inks, color chart and software used</a>
6 <a href="#">7,420,704 T</a>	<a href="#">System and method for color gamut innderacy notification</a>
7 <a href="#">7,417,764 T</a>	<a href="#">System and method for disseminating color ink and colorant formulas</a>
8 <a href="#">7,259,769 T</a>	<a href="#">Dynamic backlight and image adjustment using gamma correction</a>
9 <a href="#">7,202,976 T</a>	<a href="#">System and method for managing electronic transmission of color data</a>
10 <a href="#">7,069,186 T</a>	<a href="#">Method for remotely controlling a spectral measurement device utilizing predicted service life or a remotely provided software upgrade including color reference or shade guide data</a>
11 <a href="#">7,037,539 T</a>	<a href="#">Nutritious strawberry fruit juice drink and method of making the same</a>
12 <a href="#">7,034,960 T</a>	<a href="#">System and method for managing electronic transmission of color data</a>
13 <a href="#">6,950,189 T</a>	<a href="#">Apparatus and method for measuring optical characteristics of an object</a>
14 <a href="#">6,939,071 T</a>	<a href="#">Roll-on applicator</a>
15 <a href="#">6,631,375 T</a>	<a href="#">Administration and search and replace of computerized prepress</a>
16 <a href="#">6,570,654 T</a>	<a href="#">Apparatus and method for measuring optical characteristics of an object</a>

In view of the forgoing, it is clear that reference to a Patone color should not be considered to render a claim indefinite.

**Claim 8**

Applicants are unable to determine what trademark is allegedly used in this claim from the Office action. The refusal in the Office action of this claim as being allegedly indefinite should be withdrawn.

### **Claim 12**

Claim 12 has been amended so that it no longer includes a trademark.

### Claim 13

**Claim 13 has been cancelled.**

#### **Claim 14**

Claim 14 has been amended to not include the mark Cawiton. The use of Pantone does not render this claim indefinite for the reasons noted above.

## II. Alleged Anticipation

The Office action alleges that claim 1-7, 9, 12-14, and 16-18 are allegedly anticipated by Py (US 2003/0088216). Applicants disagree and request withdrawal of all of the rejections based on alleged anticipation.

### Claim 1

The Office action alleges that Py discloses an elastomer material having an absorption coefficient for laser light of  $0.5 - 2.5 \text{ mm}^{-1}$  as claimed by the Applicants, allegedly because Py discloses in claim 3 a stopper “formed of at least one of a thermoplastic and elastomeric material.” Applicants disagree that this disclosure in Py discloses the feature as originally claimed by Applicants. Claim 3 of Py does not disclose a material having an absorption coefficient for laser light of  $0.5 - 2.5 \text{ mm}^{-1}$ .

However, in any event, Applicants have amended claim 1 to include the further features that the elastomer material comprises a base thermoplastic elastomer of styrene-ethylene/butylene-styrene thermoplastic elastomer (supported at least by original claim 4) and that it is compounded with a colourant (supported at least by original claim 2) to have the noted absorption coefficient for laser light at a wavelength of 960-1000 nm (supported at least by original claim 27).

The Office action does not allege that Py includes these additional features, and Py does not include these features (for example, Py’s disclosure of a generic “styrene block copolymer” in Py’s claim 15 does not disclose the more specific styrene-ethylene/butylene-styrene thermoplastic elastomer that is a feature of claim 1) and the claim is additionally not anticipated in view of the inclusion of these additional features.

### Claim 2

Claim 2 has been substantially amended into 1 and has been cancelled.

### Claim 3

The Office action alleges that Py discloses an elastomer material having a melting point of 200°C or less as claimed by the Applicants, allegedly because Py discloses in claim 3 a stopper “formed of at least one of a thermoplastic and elastomeric material.” Applicants disagree that this disclosure in Py discloses the feature as originally claimed by Applicants. Claim 3 of Py does not disclose a material having a melting point of 200°C or less.

However, in any event, claim 1 is not anticipated for the reasons noted above and claim 3 is additionally not anticipated because it depends from novel claim 1.

Claims 4-5

While not anticipated, these claims have been cancelled.

Claim 6

Claim 6 depends from novel claim 1 and is not anticipated for at least that reason.

Claim 7

Claim 7 depends from novel claim 6 and is not anticipated for at least that reason.

Claim 9

Claim 9 depends from novel claim 6, which depends from novel claim 1. The Office action alleges that Py discloses the further feature of claim 9 that the carrier material comprises ethylene vinyl acetate, low density polyethylene or polypropylene in view of Py's disclosure in paragraph 46 that a thermoplastic material may be a blend of a kind of copolymer and second material that might be an olefin. However, "olefin" is simply a synonym for an alkene. Thus, Py's disclosure that a thermoplastic material may be a blend that might include an olefin does not disclose the more specific feature of Applicants' claim that the carrier material comprises ethylene vinyl acetate, low density polyethylene or polypropylene. Claim 9 is novel for this reason, and also because of its dependence on novel base and intermediary claims.

Claim 12

Claim 12 depends from novel claim 1 and additionally features that the base styrene-ethylene/butylene-styrene thermoplastic elastomer is compounded with 1 – 5 wt% of a colourant master batch comprising an ethylene vinyl acetate carrier with 35 – 45 wt% of pigment of a colour Pantone 5497C, 556C, 5565C, 563C, 570C, 5555C or a similar grey or grey-green colour.

The Office action alleges that claim 1 is anticipated and that Py additionally discloses that the base styrene-ethylene/butylene-styrene thermoplastic elastomer is compounded with 1 – 5 wt% of a colourant master batch comprising an ethylene vinyl acetate carrier with 35 – 45wt% of pigment of a colour Pantone 5497C, 556C, 5565C, 563C, 570C, 5555C or a similar grey or grey-green colour as claimed by Applicants in claim 12, allegedly because Py discloses in claim 3 a stopper "formed of at least one of a thermoplastic and elastomeric material"; in claim 15 that a first material consists essentially of a "styrene block copolymer and a second material consisting essentially of an olefin"; and in claim 22 "wherein the predetermined color is grey."

However, as noted above, claim 1 is not anticipated. Thus, neither is claim 12. Moreover, the portions of Py cited in the Office action do not disclose the base styrene-ethylene/butylene-styrene thermoplastic elastomer or that it is compounded with 1 – 5 wt% of a colourant master batch comprising an ethylene vinyl acetate carrier with 35 – 45wt% of pigment of a colour Pantone 5497C, 556C, 5565C, 563C, 570C, 5555C or a similar grey or grey-green colour as claimed by Applicants.

Claim 13

While not anticipated, claim 13 has been cancelled.

Claim 14

Claim 14 depends from novel claim 1 and further features that the base styrene-ethylene/butylene-styrene thermoplastic elastomer is compounded with 3 – 15 wt% of a colourant master batch comprising an LPDE carrier with 15-20 wt% of pigment of a colour Pantone 5497C, 556C, 5565C, 563C, 570C, 5555C or a similar grey or grey-green colour.

The Office action alleges that claim 1 is anticipated and that Py additionally discloses that the further features of claim 14, allegedly because Py discloses in claim 3 a stopper “formed of at least one of a thermoplastic and elastomeric material”; in claim 15 that a first material consists essentially of a “styrene block copolymer and a second material consisting essentially of an olefin”; and in claim 22 “wherein the predetermined color is grey.”

However, as noted above, claim 1 is not anticipated. Thus, neither is claim 14. Moreover, the portions of Py cited in the Office action do not disclose a base styrene-ethylene/butylene-styrene thermoplastic elastomer is compounded with 3 – 15 wt% of a colourant master batch comprising an LPDE carrier with 15-20 wt% of pigment of a colour Pantone 5497C, 556C, 5565C, 563C, 570C, 5555C or a similar grey or grey-green colour as claimed by Applicants.

Claims 16-18

Claims 16-18 all depend from novel claim 1 and further include additional novel features. However, the Office action alleges that the additional features of these claims are inherent, without further explanation. Applicants note that this statement is insufficient to refuse claims as allegedly being inherently anticipated and that the refusal should be withdrawn on this basis as well. As stated in the Manual of Patent Examining Procedure, “[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably

support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." MPEP § 2112 (emphasis in original).

### III. Alleged Obviousness

The Office action alleges that claims 8, 10-11, and 15 are allegedly obvious. Applicants disagree and request withdrawal of all of the rejections based on alleged obviousness.

#### Claim 8

Claim 8 depends from claim 7, which depends from claim 6, which depends from independent claim 1. Claim 8 further includes the feature that the colourant comprises a mixture of the pigments (:) white 6, black 7, green 7 and blue 29.

The Office action alleges that claim 8 is obvious over Py in view of Asthana et al. (US2003/017548). In this regard, the Office action alleges that Py discloses all of claim 8 except for the mixture of pigments.

However, Py does not disclose all of the features of claim 1 or the intervening claims for the reasons discussed above. Thus, Py does not disclose all of the features of claim 8 except for the feature that the colourant comprises a mixture of the pigments (:) white 6, black 7, green 7 and blue 29 as alleged. Accordingly, the Office action does not set forth a *prima facie* case of obviousness and this refusal should be withdrawn.

Further, Asthana et al. merely discloses a listing of approximately 52 "pigments that are stable at high temperatures." Simply identifying many pigments that may be stable at high temperatures does not render a specific combination from the listing of pigments obvious. Thus, Asthana cannot be combined with Py in the combination advanced by the Office action.

#### Claim 10

Claim 10 depends from claim 6, which depends from independent claim 1. Claim 10 further includes the feature that the colourant comprises 10 – 50 wt.% pigment, the balance up to 100% comprising the carrier material.

The Office action alleges that claim 10 is obvious over Py in view of DeGraff et al. (US3650664). In this regard, the Office action alleges that Py discloses all of claim 10 except for the amount of pigments.

However, Py does not disclose of the features of claim 1 or the intervening claim for the reasons discussed above. Thus, Py does not disclose all of the features of claim 10 except for the feature that the colourant comprises 10 – 50 wt.% pigment, the balance up to 100% comprising the carrier material as alleged. Accordingly, the Office action does not set forth a *prima facie* case of obviousness and this refusal should be withdrawn.

Further, DeGraff concerns “textile printing” and the emulsions used in “textile printing pastes” to “provide improve wet and dry crock.” (C1:L2-5.) The cited examples 1-2 from DeGraff concern creating a colored concentrate for use in an emulsion paste. This has absolutely nothing to do with the elastomer material of Applicants’ claims. There is no reason why one of skill in the art would import and percentage used in a formula for the creation of color concentrates in DeGraff to an elastomer material for a vial or plunger. Thus, claim 10 is also not obvious for this additional reason.

#### Claim 11

Claim 11 depends from claim 6, which depends from independent claim 1. Claim 11 further includes the feature that the colourant comprises 1 – 15wt.% of colourant, the balance up to 100% comprising the base thermoplastic elastomer.

The Office action alleges that claim 11 is obvious over Py in view of DeGraff et al. (US3650664). In this regard, the Office action alleges that Py discloses all of claim 11 except for the amount of pigments.

However, Py does not disclose the features of claim 1 or the intervening claim for the reasons discussed above. Thus, Py does not disclose all of the features of claim 11, except for the feature of the amount of the colourant. Accordingly, the Office action does not set forth a *prima facie* case of obviousness and this refusal should be withdrawn.

Moreover, for the same reasons as noted above with respect to claim 10, one of ordinary skill in the art would not have imported any limitations from DeGraff into the disclosure in Py. Thus, Claim 11 is also not obvious for this additional reason.

#### Claim 15

Claim 15 depends from independent claim 1. Claim 15 further includes the features that the elastomer material has a thickness of ca 2mm that allows less than 6% of laser power up to 8W incident power to pass through.

The Office action alleges that claim 15 is obvious over Py. In this regard, the Office action alleges that Py discloses all of claim 15 except for the thickness of the elastomer.

However, Py does not disclose of the features of claim 1 for the reasons discussed above. Thus, Py does not disclose all of the features of claim 15 except for the feature of the thickness of the elastomer. Accordingly, the Office action does not set forth a *prima facie* case of obviousness and this refusal should be withdrawn. Applicants also disagree that the thickness of the elastomer material would otherwise be obvious from Py.

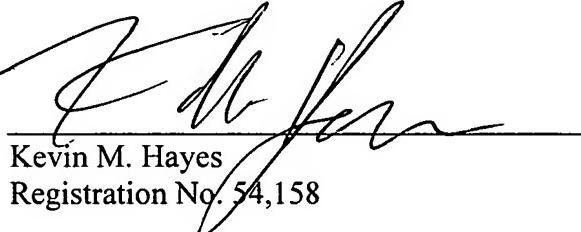
#### IV. Conclusion

In view of the forgoing, this application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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